No. 83-2157

Office - Supreme Court, U.S.
FILED
JUL 27 1984
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

October Term, 1983

CRANE NECK ASSOCIATION, INC.; ARTHUR L. DOUGLAS, JR.; CATHERINE CHILDS; EVERSLEY CHILDS ODGEN; MARGHERITA A. FIDAO; CHARLES H. COPELAND; ARTHUR WEEKS and RUTH WEEKS; KEVIN HANLON and JO ANN HANLON; MARION HOMIRE; HIROSHI TAKAHASHI and YOSHIKO TAKAHASHI; PHILIP ERHORN; LAWRENCE FORSDICK and NANCY FORSDICK; CHARLES A. FORSDICK; ARTHUR BELDER; ARTHUR R. FORSDICK; RENATTE HAKIM-ELAHI; ROBERT GORDON and IDA GORDON; H. WILLARD GRAY and BARBARA GRAY; HARVEY KRAMER; CHARLES WURSTER and EVA WURSTER; SHERRI ANN TISCH; H. TREBLING BURNARD and MARGARET BURNARD; ARTHUR AUFSES and HARRIET AUFSES; JANE PERKINS; WILLIAM MILHAVEN and BARBARA MILHAVEN; DOROTHY GRAF; JAMES HURLEY and HELENE HURLEY; BRUCE SULLIVAN and MARGARET SULLIVAN; ANNA L. HARTZELL; MAXIME C. FIDAO; WALTER EICHACKER and JANET EICHACKER; YANG S. LU and GRACE LU,

Appellants,

against

NYC/LONG ISLAND COUNTY SERVICES GROUP and JONATHAN POOL and BERNARD GROFMAN, and NEW YORK STATE DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES,

Appellees.

On Appeal from the New York Court of Appeals

MOTION OF APPELLEES NYC/LONG ISLAND COUNTY SERVICES GROUP AND NEW YORK STATE DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES TO DISMISS APPEAL OR AFFIRM JUDGMENT ON APPEAL

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for State Appellees
Two World Trade Center
New York, New York 10047
(212) 488-7580

PETER H. SCHIFF
Acting Attorney-in-Chief
Appeals and Opinions

THOMAS P. DORSEY
ROBERT L. SCHONFELD
Assistant Attorneys General
Of Counsel

BEST AVAILABLE COPY

TABLE OF CONTENTS

	PAGE
Table of Authorities	II
Facts	2
Argument	
A. There Is an Adequate Non-Federal Basis for the Decision of the New York Court Sought To Be Reviewed	6
B. No Issues Involving the Fifth and Fourteenth Amendments of the United States Constitution Are Presented by this Appeal	8
C. There Is No Substantial Federal Question Presented by this Appeal	9
Conclusion	14

TABLE OF AUTHORITIES

PAGE

Cases:

Crane Neck Association, Inc. v. NYC/Long Island County Services Group, 92 AD2d 119, 460 NYS2d 69 (2d Dept. 1983) 2, 5, 8

Crane Neck Association, Inc. v. NYC/Long Island County Services Group, 61 NY2d 154, 460 NE2d 1336, 472 NYS2d 901 (1984) 2, 6, 7, 8

Energy Reserves Group v. Kansas Power & Light Co., 459 US 400 (1983) 10, 11, 12, 13

Exxon Corp. v. Eagerton, —— US ——, 103 S.Ct. 2296 (1983) 12, 13

Forstmann v. Joray Holding Co., Inc., 244 NY 22 (1926) 10

Hecht Co. v. Bowles, 321 US 321 (1944) 9, 10

Incorporated Village of Old Field v. Introne, 81 AD2d 906, 441 NYS2d 418 (2d Dept. 1981) 3, 4, 11

Lemon v. Kurtzman, 411 US 192 (1973) 10

McCann v. Chasm Power Co., 211 NY 301 (1914) 10

Mills v. Electric Auto-Lite Co., 396 US 375 (1970) 10

Romaine v. Chauncey, 129 NY 566 (1892) 8

Rondeau v. Mosinee Paper Corp., 422 US 49 (1975) 10

United States Trust Co. v. New Jersey, 431 US 1 (1977) 12

Weinberger v. Romero-Barcelo, 456 US 305 (1982) 9

PAGE

Zubli v. Community Mainstreaming Associates, 102 Misc.2d 320, 423 NYS2d 982 (Sup. Ct., Nassau Co. 1979) *aff'd on opinion below*, 74 AD2d 624, 425 NYS2d 263 (2d Dept. 1980), *aff'd as modified*, 50 NY2d 1024, 410 NE2d 746, 431 NYS2d 813 (1980) 12

Constitutional Provisions, Federal and State Statutes:

Chapter 468 of the Laws of New York of 1978 § 1 12
Fifth Amendment, United States Constitution 8
Fourteenth Amendment, United States Constitution 8
Section 41.34 New York *Mental Hygiene Law* 12
Section 41.34(b)(1), (5), New York *Mental Hygiene Law* 3, 11
Section 41.34(c), New York *Mental Hygiene Law* 11
Section 41.34(c)(1), (5), New York *Mental Hygiene Law* 11
Section 41.34(d), New York *Mental Hygiene Law* 11
Section 41.34(f), New York *Mental Hygiene Law* 6, 7, 9
28 U.S.C. § 1257(2) 2, 6, 7

No. 83-2157

IN THE

Supreme Court of the United States

October Term, 1983

CRANE NECK ASSOCIATION, INC.; ARTHUR L. DOUGLAS, JR.; CATHERINE CHILDS; EVERSLEY CHILDS ODGEN; MARGHERITA A. FIDAO; CHARLES H. COPELAND; ARTHUR WEEKS and RUTH WEEKS; KEVIN HANLON and JO ANN HANLON; MARION HOMIRE; HIROSHI TAKAHASHI and YOSHIKO TAKAHASHI; PHILIP ERHORN; LAWRENCE FORSDICK and NANCY FORSDICK; CHARLES A. FORSDICK; ARTHUR BELDER; ARTHUR R. FORSDICK; RENATTE HAKIM-ELAHI; ROBERT GORDON and IDA GORDON; H. WILLARD GRAY and BARBARA GRAY; HARVEY KRAMER; CHARLES WURSTER and EVA WURSTER; SHERRI ANN TISCH; H. TREBLING BURNARD and MARGARET BURNARD; ARTHUR AUFSES and HARRIET AUFSES; JANE PERKINS; WILLIAM MILHAVEN and BARBARA MILHAVEN; DOROTHY GRAF; JAMES HURLEY and HELEN HURLEY; BRUCE SULLIVAN and MARGARET SULLIVAN; ANNA L. HARTZELL; MAXIME C. FIDAO; WALTER EICHACKER and JANET EICHACKER; YANG S. LU and GRACE LU,

Appellants,

against

NYC/LONG ISLAND COUNTY SERVICES GROUP and JONATHAN POOL and BERNARD GROFMAN, and NEW YORK STATE DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES,

Appellees.

On Appeal from the New York Court of Appeals

MOTION OF APPELLEES NYC/LONG ISLAND COUNTY SERVICES GROUP AND NEW YORK STATE DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES TO DISMISS APPEAL OR AFFIRM JUDGMENT ON APPEAL

Appellees, NYC/Long Island County Services Group and New York State Department of Mental Retardation and Developmental Disabilities, move this Court to dismiss

appellants' appeal from a judgment of the New York Court of Appeals, rendered February 23, 1984, which declined to grant an injunction against violation of a private restrictive covenant upon premises presently maintained by said appellees as a community residence for eight mentally disabled persons. The basis of this motion is that the appeal herein is not taken in conformity to 28 USC § 1257(2) in that the judgment of the New York Court of Appeals rests upon an adequate non-federal basis. Further, the appeal does not present a substantial federal question. In the alternative, this Court should affirm the judgment sought to be reviewed on appeal on the ground that the determination of the New York Court of Appeals was correct. Finally, even if the appellants' submission is treated as a petition for certiorari, it should be denied because the questions upon which the determination of the cause depend are not so substantial as to need further review.

The opinion of the New York Court of Appeals is reported at 61 NY2d 154, 460 NE2d 1336, 472 NYS2d 901 (1984), Jurisdictional Statement 26a-41a. The opinion of the New York Supreme Court, Appellate Division, Second Department, is reported at 92 AD2d 119, 460 NYS2d 69 (2d Dept. 1983), Jurisdictional Statement 11a-25a. The decision of the New York Supreme Court, Suffolk County, was not reported but is set forth at Jurisdictional Statement 1a-10a.

Facts

This case involves an action for injunctive and declaratory relief, *inter alia*, to prohibit the State appellees from operating a community residence for mentally disabled persons upon premises located at 3 Johns Hollow Road,

Old Field, New York, upon the grounds that such use violates a recorded restrictive covenant affecting those premises.

In August, 1979, appellee NYC/Long Island County Services Group, an agency of appellee New York State Office of Mental Retardation and Developmental Disabilities (hereinafter OMRDD), acting pursuant to then *Mental Hygiene Law* § 41.34(b)(1), notified the chief executive officer of the Incorporated Village of Old Field of its interest and intent in establishing the residence and, pursuant to the statute, sent the Village a detailed fact sheet on the residence. On September 24, 1979, the Village registered a formal objection to the establishment of the residence pursuant to then *Mental Hygiene Law* § 41.34(b)(1). As a result, a Commissioner's fact-finding hearing at which both the appellee NYC/Long Island County Services Group and the Village presented evidence was held pursuant to then *Mental Hygiene Law* § 41.34(b)(5) on October 26, 1979.

The Commissioner of appellee OMRDD denied the Village's objection on December 13, 1979, determining that the Johns Hollow Road site would not "substantially alter the nature and character of the area" and would be appropriate for a community residence. The Village then commenced a proceeding pursuant to Article 78 of the New York Civil Practice Laws and Rules challenging the Commissioner's determination as not being based on substantial evidence. Thereafter, New York Supreme Court, Appellate Division, Second Department, confirmed the determination and dismissed the proceeding. *Incorporated Village of Old Field*

v. *Introne*, 81 AD2d 906, 441 NYS2d 418 (2d Dept. 1981). That decision was not appealed to the New York Court of Appeals. After the Commissioner's determination, appellee NYC/Long Island County Services Group entered into a lease agreement for the Johns Hollow Road premises with appellees Pool and Grofman.

Shortly thereafter, in September, 1980, appellants, a homeowner association and 48 homeowners, commenced this action against the appellees. The action purported to allege seven causes of action, five of which sought declaratory and injunctive relief and two of which sought monetary damages. As pointed out, *supra*, the appellants sought declaratory and injunctive relief to prohibit the State appellees from operating the community residence in question and to prohibit appellees Pool and Grofman from leasing and renting the property to the State appellees. Against appellees Pool and Grofman, the appellants also sought exemplary damages, attorneys' fees, and the amount of profit Pool and Grofman would realize under the lease on the ground that their leasing of the premises for a community residence for mentally disabled persons "evidences a high degree of moral turpitude." The appellants also sought exemplary damages and other damages "the amount of which cannot be now ascertained" against the State appellees on the ground that the State appellees' action "evidences a wanton, deliberate and reckless disregard for the rights of plaintiffs."

Appellants alleged that the use of the premises as a community residence for mentally retarded persons violated a covenant affecting the property and sought enforce-

ment of the covenant to evict the present residents of the house. The covenant relied upon by the appellants, drafted in 1945, restricted use of the premises to single family dwellings.

All of the appellees answered the complaint and shortly thereafter, appellants, without conducting any discovery, moved for summary judgment. The appellees opposed the motion. The Supreme Court, Suffolk County (*Gerard*, J.), granted appellants partial summary judgment, finding that though the community residence for mentally retarded persons was not a single family dwelling for the purposes of the covenant, questions of fact existed as to waiver, estoppel and whether the character of the neighborhood had changed so as to defeat the object and purposes for which the restrictions were imposed. Appellants' claims for monetary damages were not addressed by the motion or the Court. Jurisdictional Statement 1a-10a. The appellees appealed the court's order.

The Appellate Division, Second Department, unanimously reversed the order of the Supreme Court, Suffolk County, granted summary judgment to the appellees, and dismissed the complaint insofar as it sought injunctive relief. *Crane Neck Association, Inc.* v. *NYC/Long Island County Services Group*, Jurisdictional Statement 11a-25a. Finding that the community residence was a single family dwelling for the purpose of the covenant, the Appellate Division declared that the establishment of the community residence was not violative of the restrictive covenant in question. Moreover, the Appellate Division declared that, as a matter of public policy, a private restrictive covenant could not be enforced to prevent the establishment of com-

munity residences under the Mental Hygiene Law. The Appellate Division did not address appellants' claims for monetary damages.

The appellants appealed to the New York Court of Appeals, and that Court unanimously affirmed the order of the Appellate Division, Second Department. *Crane Neck Association, Inc.* v. *NYC/Long Island County Services Group,* Jurisdictional Statement 26a-41a. The Court of Appeals held that the covenant could not be equitably enforced "because to do so would contravene a long-standing public policy favoring establishment of such residences for the mentally disabled." Jurisdictional Statement 31a, 32a. The Court based its conclusion on statements made and actions taken by both the executive and legislative branches of the New York State government since 1954, as well as on *Mental Hygiene Law* § 41.34(f). The Court of Appeals did not address the appellants' claims for monetary damages.

This appeal is from the judgment of the New York State Court of Appeals. Jurisdictional Statement 42a, 43a-47a.

ARGUMENT

A. There Is an Adequate Non-Federal Basis for the Decision of the New York Court Sought To Be Reviewed.

The narrow issue presented by this case is whether state courts are required to enforce equitably a private restrictive covenant even when it contravenes a long-standing state public policy. Appellants' reliance upon 28 U.S.C.

§ 1257(2) to invoke the Court's appellate jurisdiction is misplaced in that it assumes that the decision of the New York court rests solely upon a holding that § 41.34(f) of New York *Mental Hygiene Law*, declaring community residences for the mentally disabled to be family units, applies to private restrictive covenants. See Jurisdictional Statement 6. A review of the decision challenged here indicates that such a holding was not necessary to the outcome and at most was an alternative holding.* In fact, the New York Court predicated its decision on the holding that the ". . . covenant cannot be *equitably enforced* because to do so would contravene a *long-standing public policy* . . .". Jurisdictional Statement 31a, 32a. (Emphasis added). In support of its holding, the court reviewed the development of the state's public policy citing the pronouncements of four governors, ten legislative enactments, a consent decree entered into by the state and a five-year plan for community placement issued by the state's Department of Mental Hygiene. Jurisdictional Statement 31a-35a. The court then concluded:

> "Thus the consistent, unequivocal pronouncements over the past 30 years leave no doubt that it is an important state policy to deinstitutionalize mentally and developmentally retarded individuals, and to house and teach them in community residences such as the

* While the opinion of the New York Court of Appeals is not totally free from doubt, with respect to its treatment of § 41.34(f) of the New York *Mental Hygiene Law* (Jurisdictional Statement 35a-39a), it would appear, that the Court's discussion was to rebut any suggestion that the statute was inconsistent with the public policy developed over three decades in that it constituted a legislative determination to preserve the effect of private restrictive covenants. The Court of Appeals there reiterated its conclusion that the covenant could not be enforced because to do so would frustrate state public policy. Jurisdictional Statement 39a.

one now maintained at 3 Johns Hollow Road, in Crane Neck." 61 NY2d 163, 460 NE2d 1340, 472 NYS2d 906 (*Kaye*, J.), Jurisdictional Statement 34a, 35a.

Thus, it is clear that the decision below rested upon the traditional principle that equitable relief will not be had where it would contravene public policy. *Romaine* v. *Chauncey*, 129 NY 566, 573 (1892).

B. No Issues Involving the Fifth and Fourteenth Amendments of the United States Constitution Are Presented by this Appeal.

Appellants' Fifth and Fourteenth Amendment claims (Jurisdictional Statement 14-16) are basically untenable for the simple reason that appellants do not approach this Court seeking either just compensation or the due process opportunity to obtain that remedy. Nor did they seek such relief from the highest court in New York but, as here, only presented these perceived federal claims by way of argument in an effort to convince the New York court to grant them equitable relief. In point of fact, the order affirmed by the New York Court of Appeals did not dispose of appellants' two causes of action for money damages but dismissed the complaint only insofar as it sought injunctive relief. Jurisdictional Statement 25a. Thus, the present posture of this case is that the appellants' causes of action for money damages remain undisposed of by the state courts. Ironically, by raising their Fifth and Fourteenth Amendment claims, the appellants demonstrate the flaw in their Contract Clause argument by highlighting the fact that the denial of equitable relief by the state courts did not directly involve the question of what compensation or

damages, if any, might be due appellants for the alleged interference with their property or contract rights. See Jurisdictional Statement 16.

C. There Is No Substantial Federal Question Presented by this Appeal.

Even if it be assumed *arguendo* that the New York court's determination was necessarily based upon a holding that New York *Mental Hygiene Law*, § 41.34(f) prohibits the enforcement of the restrictive covenant rather than relying upon a long-standing important state public policy to preclude equitable relief, that determination should be affirmed. The state appellees contend that an analysis of appellants' asserted contract right, the extent of the alleged impairment thereof and the statute involved clearly indicates that appellants' Contract Clause claims are without merit.

First, it is necessary to determine the extent of appellants' contract right to, and the justification of their expectations of, equitable enforcement of their deed restrictions. Appellants did not enjoy, *ab initio*, a contract right to impose upon a court of equity the mechanical obligation to grant an injunction for every violation of their covenant, *Weinberger* v. *Romero-Barcelo*, 456 US 305, 313 (1982), nor did they have any reason to expect that a court of equity would not pay particular regard for the public consequences in employing the extraordinary remedy of injunction. *Weinberger* v. *Romero-Barcelo, supra,* 312. One year prior to the initial imposition of the restrictive covenants upon parcels in "Crane Neck Farm", this Court in *Hecht Co.* v. *Bowles*, 321 US 321 (1944), observed:

> "The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the *public interest* and private needs as well as between competing private claims." 321 US 329, 330. (*Douglas*, J.) (Emphasis added).

See also, *Rondeau* v. *Mosinee Paper Corp.*, 422 US 49, 60 (1975); *Lemon* v. *Kurtzman*, 411 US 192, 200 (1973); *Mills* v. *Electric Auto-Lite Co.*, 396 US 375, 386 (1970). Of more ancient vintage in New York is *McCann* v. *Chasm Power Co.*, 211 NY 301 (1914), in which the New York Court of Appeals noted:

> "A court of equity can never be justified in making an inequitable decree. If the protection of a legal right even would do a plaintiff but comparatively little good and would produce great public or private hardship, equity will withhold its discreet and beneficient hand and remit the plaintiff to his legal rights and remedies." 211 NY 305 (*Collin*, J.).

Similarly, in *Forstmann* v. *Joray Holding Co., Inc.*, 244 NY 22 (1926), that court noted:

> ". . . we find that although defendants proceeded with full knowledge of the facts and with notice of plaintiffs' claim, they had good reason to doubt whether . . . equity would enforce such rights as the plaintiffs claimed." 244 NY 32 (*Pound*, J.).

This Court has held that there can be no substantial impairment of contractual rights in the absence of an impairment of the "reasonable expectations" of the parties. *Energy Reserves Group* v. *Kansas Power & Light Co.*, 459

US 400, 416, 421 (1983). Considering the traditional role of courts of equity, any expectation on the part of appellants that their covenant could be perpetually enforced without regard for subsequent legislation advancing a legitimate public purpose would not be reasonable.

Second, there is a serious question as to how substantial the alleged impairment of appellants' contract right is. Of course, the fact that, as pointed out above, such contract right was not without reservation must be considered in assessing the gravity of the impairment. Additionally, the statute complained of excludes but one specific use from the reach of the covenant. Moreover, that statute, in other subdivisions thereof, provides for the protection of the residential character of neighborhoods. *Mental Hygiene Law* § 41.34, subd. (c) pars. (1), (5) formerly subd. (b) pars. (1), (5); subd. (d) formerly subd. (c). Said subdivisions provide for objections to the establishment of a community residence for the mentally disabled upon the ground that the nature and character of the area would be substantially altered and judicial review of the administrative determinations resolving such objections. Both the administrative procedures and judicial review were utilized with respect to the community residence involved in this appeal with the result that a finding that such community residence would not substantially alter the surrounding area was judicially confirmed. *Incorporated Village of Old Field* v. *Introne,* 81 AD2d 906, 441 NYS2d 418 (2d Dept. 1981). It is apparent that the adjustment of the rights and responsibilities of the contracting parties effectuated by the statute was upon reasonable conditions and of a character

appropriate to the public purpose. *Energy Reserves Group* v. *Kansas Power & Light Co., supra,* 412 (1983).

Third, consideration must be given to the statute involved and the legitimate public purpose sought to be advanced thereby. *Mental Hygiene Law,* § 41.34 ". . . is an exercise of the State's police power that sweeps from border to border, affecting all property owners and all municipalities . . .". *Zubli* v. *Community Mainstreaming Associates,* 102 Misc. 2d 320, 335, 423 NYS2d 982, 993 (Sup. Ct. Nassau Co. 1979), *aff'd on opinion below* 74 AD2d 624, 425 NYS2d 263 (2d Dept. 1980), *aff'd as mod.* 50 NY2d 1024, 410 NE2d 746, 431 NYS2d 813 (1980). Thus, the law applies to all regardless of whether they happen to be parties to contracts. See *Exxon Corp.* v. *Eagerton,* —— US ——, ——, 103 S. Ct. 2296, 2306 (1983). Further, *United States Trust Co.* v. *New Jersey,* 431 US 1 (1977), is inapplicable here since this case involves a law of general application and not one aimed at a state contract.

The legislative statement of intent of the statute in issue was set forth in Chapter 468 of the Laws of New York of 1978, § 1, which declares that ". . . mentally disabled persons have the right to attain the benefits of normal residential surroundings . . ." and articulates the legislative intent that ". . . such persons remain in normal community settings receiving such treatment, care, rehabilitation and education as may be appropriate to each individual. . . ." That section further states that ". . . the legislature recognizes the need to avoid, wherever practicable, a disproportionate distribution of community residences and other similar facilities." Clearly, the New York legislature enacted the statute in furtherance of a significant and

legitimate public purpose. *Energy Reserves Group* v. *Kansas Power & Light Co., supra*, 411. In this instance the legislature sought not only to address the state's traditional *parens patria* role with respect to the mentally disabled but also provided a method for insuring the fair distribution of community residences in neighborhoods throughout the state. Parties may not utilize contracts to estop legislatures from enacting laws intended for the public good. *Exxon Corp.* v. *Eagerton, supra*, 103 S. Ct. 2306 note 12.

Viewed in the light most favorable to the appellants, the instant case involves a minimal impairment of a contract right which was not absolute from its inception by a statute of general application designed to advance the broad societal interest of deinstitutionalizing the mentally disabled while avoiding the disproportionate distribution of community residences and affording administrative safeguards against substantial alteration of neighborhoods subject to judicial review.

Conclusion

For All of the Above Reasons this Court Should Dismiss this Appeal and Deny Certiorari or, in the Alternative, Affirm the Judgment Appealed From, With Costs.

Dated: New York, New York
July 26, 1984

Respectfully submitted,

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for State Appellees

PETER H. SCHIFF
Acting Attorney-in-Chief
Appeals and Opinions

THOMAS P. DORSEY
ROBERT L. SCHONFELD
Assistant Attorneys General
*Of Counsel**

---

* The assistance of Michael E. Gottfried, a Summer Law Intern, in the preparation of this submission is gratefully acknowledged.